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11
                  NORTHERN DISTRICT OF CALIFORNIA
12
                        SAN JOSE DIVISION
13

14

15  ANGEL FRALEY; PAUL WANG; SUSAN          Case No. 11-CV-01726 LHK (PSG)
    MAINZER; JAMES H. DUVAL, a minor, by
    and through JAMES DUVAL, as Guardian ad
16  Litem; and W.T., a minor, by and through     **DECLARATION OF JAMES C. SQUIRES IN**
    RUSSELL TAIT, as guardian ad Litem;          **SUPPORT OF FACEBOOK, INC.'S**
17  individually and on behalf of all others     **OPPOSITION TO PLAINTIFFS' MOTION**
    similarly situated,                          **FOR CLASS CERTIFICATION**
18
                        Plaintiffs,
19
            v.
20
                                                 Date:          May 24, 2012
    FACEBOOK, INC, a corporation; and DOES       Time:          1:30 p.m.
21  1-100,                                       Courtroom:     4
                                                 Judge:         Hon. Lucy H. Koh
22                      Defendants.              Trial date:    December 3, 2012

23                                               **[PUBLIC REDACTED
                                                 VERSION]**
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1    I, James C. Squires, hereby declare as follows:

2    1.    I am a Product Marketing Manager at Facebook, Inc. ("Facebook").  I have been

3    employed by Facebook for over two years.   Based on my overall experience working for

4    Facebook, I have general knowledge of the functioning and layout of the website, as well as

5    Facebook's marketing tools, including Sponsored Stories.   Except as otherwise noted, I have

6    personal knowledge of the following facts and, if called to testify, could and would testify

7    competently thereto.

8    **The Facebook Website and User Registration**

9    2.    Facebook    operates    the    social    networking    website    accessible    at

10   www.facebook.com.  Facebook currently has over 845 million users ("Users") worldwide, with

11   145 million living in the United States.  The population of Facebook Users is geographically and

12   demographically diverse.

13   3.    Users log in to Facebook to keep up with friends, upload photos, organize events,

14   share links and videos, play social games, and learn more about the friends, family, causes,

15   businesses, and organizations they care about.

16   4.    Facebook is—and always has been—free to use.

17   5.    To join Facebook, a prospective User must provide his or her name, gender, and

18   date of birth, provide a valid email address, and agree to Facebook's terms of use, known as the

19   Statement of Rights and Responsibilities.  A screenshot of the current sign up page is shown in

20   Figure 1.

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2.

**Figure 1 – Sign-Up Page**



6.      Facebook requires Users to provide their real names during registration in order to promote authenticity and safety on the Facebook website.  Nevertheless, to the best of my knowledge, many Facebook Users sign up using fake names or pseudonyms, and Facebook has no way of verifying every Facebook User's real name.

7.      While Users must provide their date of birth, they need not share the date with others.  The requirement is primarily to verify that Users are over 13 years of age because Facebook only permits people aged 13 and over to register for Facebook.

**Friends**

8.      One of the relationships Users can establish on Facebook is the "Friend" relationship.  To become "Friends," a User sends a "Friend Request" to another User, who can then choose to accept or decline the Friend request.  The Friend relationship is only established if both Users agree to become Friends, and either Friend can terminate the connection at any time by "Unfriending" the other person.  Figure 2 shows an example of a Friend Request.

**Figure 2 – Example of Friend Request**
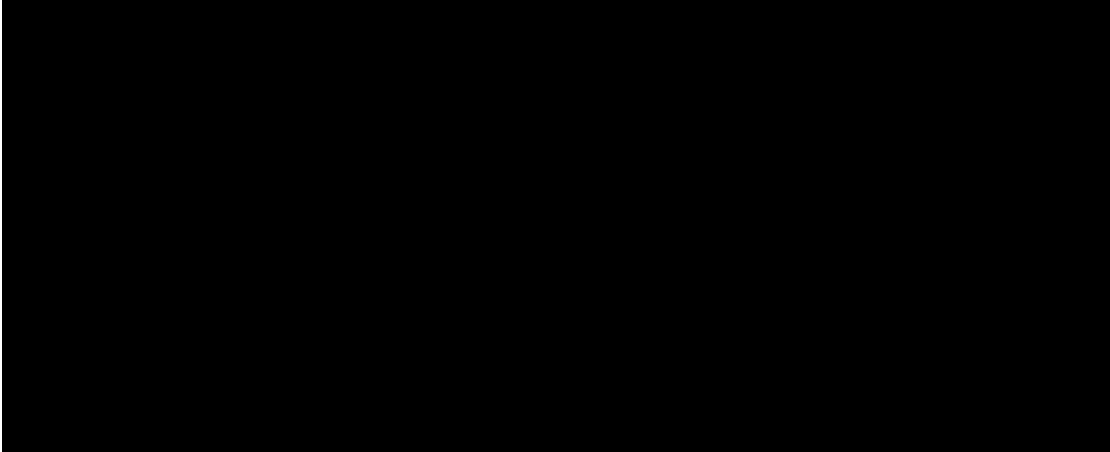


9.      Some Users have a handful of Facebook Friends, but many Users have hundreds or even thousands of Friends.  The average User today has between 100 and 150 Friends.

10.     By default, a User's Friends are allowed to see any content the User shares on Facebook, although a User may restrict his or her sharing of individual pieces of content to a subset of Friends or may choose to not share the content with anyone.

<u>**Pages**</u>

11.     In November 2007, Facebook launched Pages, a way for businesses, organizations, and brands to share their stories and connect with Users on the site.  While Profiles or Timelines (discussed below) represent individuals, Pages allow an organization, business, celebrity, or band to maintain a professional presence on Facebook, and a wide variety of entities and individuals have Facebook Pages.

12.     One way that a User can connect with an organization, band, etc., is by clicking a button labeled "Like" that is associated with some particular Facebook Page.  If a User likes the Facebook Page of a musical group, a news outlet, or a charitable organization, updates from those sources will appear in the User's News Feed.  Figure 3 shows an example of a "Like" button on CNN's Facebook Page.
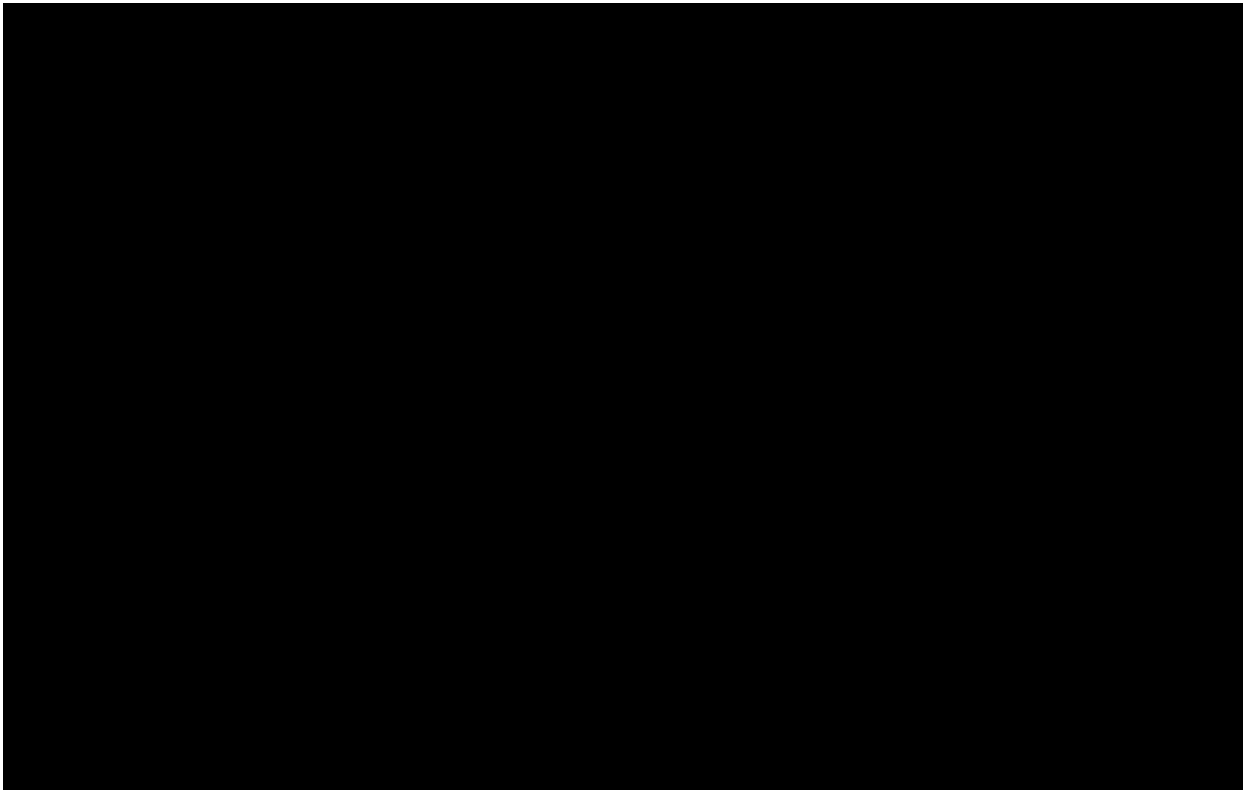
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**Figure 3- Example of "Like" Button on a Facebook Page**



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12        **Home Page and News Feed**

13    13.    When Users log in to Facebook, the first page they see is usually their "Home

Page." Figure 4 shows an example of a Home Page.

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**Figure 4 – Example of Home Page**

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14.    The layout of the Home Page, like other features of the website, has evolved significantly since Facebook first launched in 2004.  Before September 2006, there was no centralized place where Users could see their Friends' activity and content.  Instead, Users had to navigate to individual Friends' Profile Pages to get updates about what they were doing.  With the launch of the redesigned Home Page in September 2006, Facebook introduced an interactive and simple way for Users to see news stories about their Friends, called the News Feed.  Since then, the Home Page has generally followed a three-column layout.

15.    The left-hand side of the Home Page contains links and tools to help Users navigate the Facebook website.

16.    The right-hand side of the Home Page shows a variety of ever-changing sponsored content and non-sponsored content (which means Facebook is not paid for displaying these units).

17.    As an example of non-sponsored content, in August 2011, Facebook launched "Ticker" on the right-hand side of Home Page.  Ticker is an extension of News Feed (discussed below) that shows a personalized flow of news stories about a User's Friends on a real-time basis.  Other non-sponsored units show interesting social content from or about a User's Friends.  For example, Facebook may show the names and Profile Pictures of other Users ("People You May Know") based on connections a User's Friends have made with other Facebook Users.  Facebook may also suggest Pages that a User's Friends have connected to or apps and games that a User's Friends have used or played.  For example, if a User is Friends with Jane Smith, and Jane Smith has "Liked" the "Barack Obama" Page on Facebook, then Facebook may show the name and Profile Picture of that Page, alongside a statement that "Jane Smith likes this."

18.    Facebook may also display advertisements or other sponsored content, including Sponsored Stories, on the right-hand side.  Like the other content displayed on the right-hand side (and the site more generally), Facebook may show the names and Profile Pictures of a User's Friends who have interacted with the content or Page being sponsored or advertised.

19.    All of the sponsored and non-sponsored content displayed on the right-hand side is personalized for each User and may change every time a User loads or refreshes a page on

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Facebook.  Figures 5 and 6 below are examples of the right-hand side of one User's Home Page at different times.

**Figure 5 – Example of Right-Hand Side**
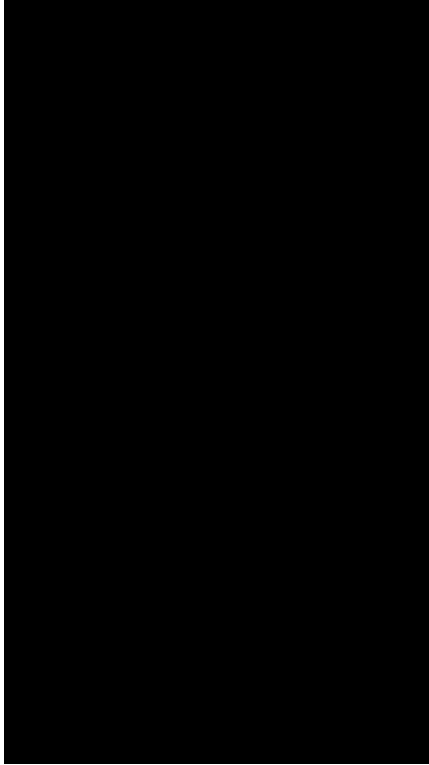
**Figure 6 – Example of Right-Hand Side**
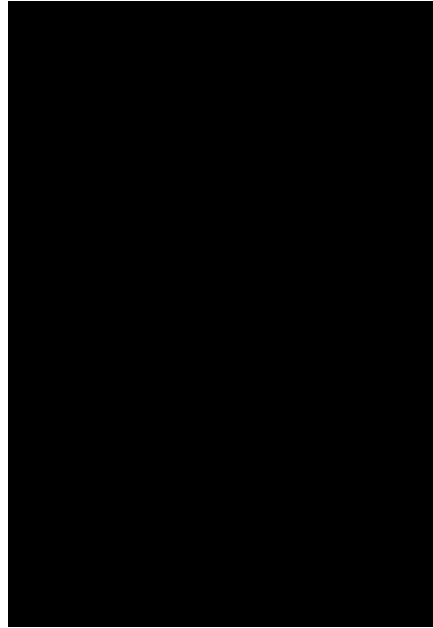




20.    The center column of the Home Page contains the News Feed, which is, for most Users, the primary mechanism by which Users "consume" information on Facebook—i.e., it is the main place where Users see and interact with updates and stories from and about their Friends and the Pages they have connected with on Facebook.

21.    Each User's News Feed contains a customized and constantly updating flow of selected "stories" from and about the User's Friends as well as Pages the User has chosen to connect with on Facebook, such as businesses, news outlets, political or religious organizations, entertainers, music groups, reporters and authors, companies, celebrities, movie studios, etc.

22.    Just as a User's News Feed consists of the information shared with that User by his Friends, the information that the User himself chooses to share with his Friends appears in *their* News Feeds.  Friends with whom a User has shared his or her content are eligible to see that content on a variety of places on the site, including in News Feed.  A User, however, is not

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notified when his or her Friends *view* content shared in News Feed (or otherwise).  To the best of my knowledge, this is generally how Facebook has operated since the News Feed launched in September 2006.

## Timeline / Profile Pages

23.    Each Facebook User has a unique Profile page (known today as a "Timeline") that displays content the User has shared on Facebook, as well as content the Users' Friends have posted to the User's Timeline.  Figure 7 below is an example of a Timeline.

**Figure 7 – Example of Timeline**
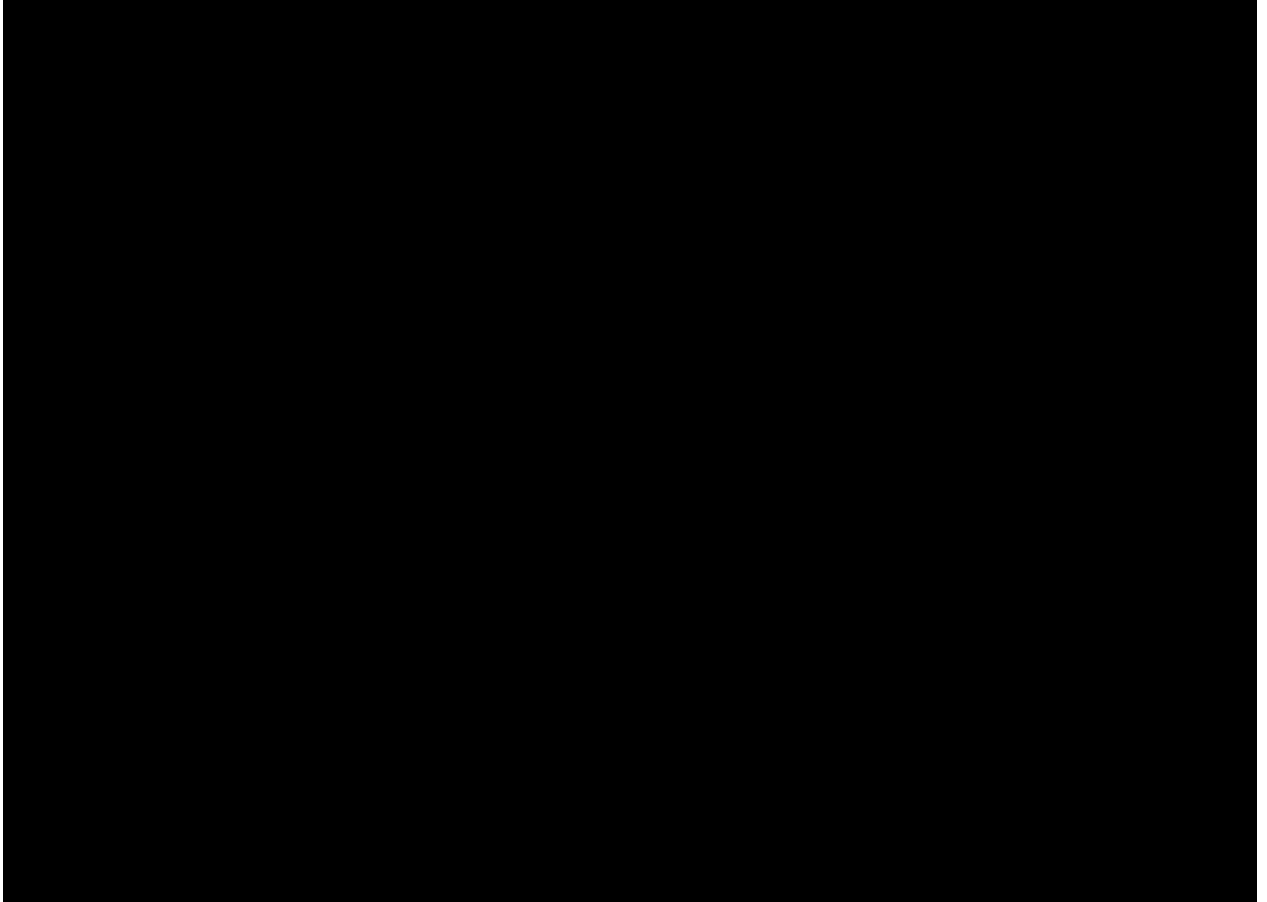


24.    A User's Timeline also includes information about the User via the "About" tab. Such information includes basic biographical information (current city, hometown, relationship status, political views, contact information, etc.).  Beyond their name, gender, date of birth, and email address, Users do not need to add any of this additional information, but many Users add some additional content.  Users may review, edit, add to, or subtract from this information at any time, and—except for a User's name, gender, and Profile Picture, which are public—Users can

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1  limit who can see each category of information by using their privacy settings.  An example of a

2  User's "About" page is shown in Figure 8.

3  **Figure 8 – Example of About Page**
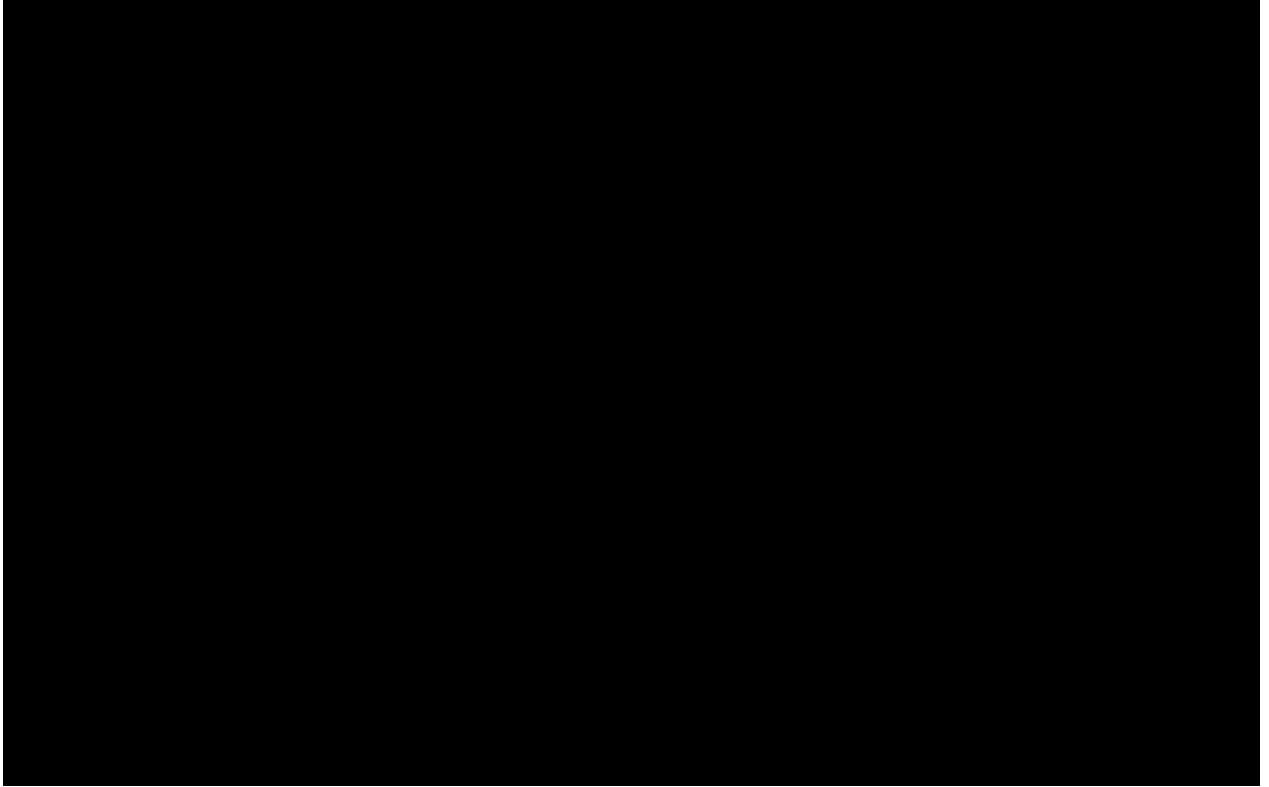


17      25.    Further information about the User's interests that they have chosen to share can

18  be seen by clicking on the "Likes" link on the User's Timeline, which brings one to the User's

19  "Favorites" page.  The Favorites page shows information about the Pages the User has Liked on

20  Facebook (e.g., "Sports," "Music," "Books," "Movies," and "Activities and Interests").  An

21  example of a User's "Favorites" page is shown in Figure 9.

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**Figure 9 – Example of "Favorites" Page**
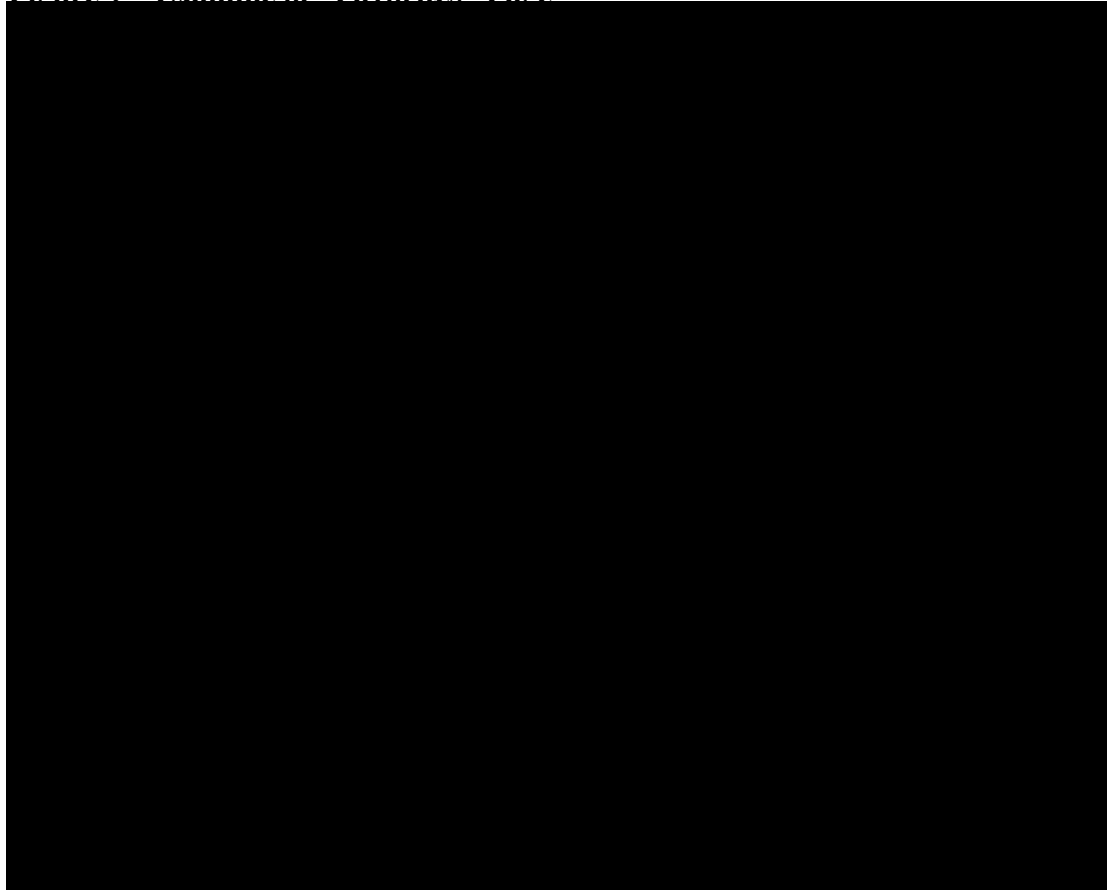


## Profile Pictures

26.     Users can choose to, but need not, upload a "Profile Picture" to their Profiles.

27.     A Profile Picture can be an image or photo of virtually anything (subject to Facebook's terms and policies), including people, pets, landscapes, text, objects, symbols, or, of course, an image of the User herself.

28.     Users can change their Profile Pictures at any time, and many Users have used Profile Pictures that do not contain their likenesses.

29.     Facebook has no way of verifying if, at any given time, a Profile Picture is an actual image of the User.

30.     The Profile Picture is displayed in the upper-left corner of the User's Timeline, and is also displayed next to virtually all User posts on other places on the website.  Figure 10 below is an example of a Profile Picture.

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**Figure 10 –Example of Profile Photo**



31.    Below in Figure 11 are examples of Users' Profile Pictures displayed next to actions in the News Feed.

**Figure 11 – Examples of How a User's Name and Profile Picture Displays in News Feed**



32.    Just like Users, Facebook Page owners can upload Profile Pictures.  A Page's Profile Picture is displayed at the top of its Page on Facebook near the Like button and appears next to any content posted by the Page.  Below in Figures 12 and 13 are examples of Pages' Profile Pictures and how they may appear in the News Feed.

**Figure 12 – Examples of Pages' Profile Pictures**

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**Figure 13 – Examples of Pages' Profile Pictures in News Feed**





**Privacy Settings**

33.    Facebook provides a variety of granular controls that enable Users to share posts, photos, and other content with exactly the people they want.

34.    Users can limit the display of their content, for example, to Friends, Friends of Friends, subsets of Friends, a single individual, or just to the User herself.

35.    Facebook Users can retroactively change their settings at any time, and they can also delete stories they have previously shared.

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**Sharing, Interacting with, and Adding Content on Facebook**

36.      Users share content on Facebook in numerous ways: status updates; posting or commenting on photos or videos; creating events or polls; posting comments in a group; sending private messages; or making video calls.

37.      Users who have upgraded their profile to Timeline can view all their historical account activity and the privacy controls associated with each piece of content they have shared in the "activity log" on their Timeline, including their past Likes, check-ins, posts, comments, and game and app activity (described in more detail below).  Users can change the applicable privacy controls for, or delete, all such content in their activity logs, as well.  Only the User has access to his or her activity log.

**Status Update**

38.      One of the principal means of sharing is, as referenced above, the "status update," which is typically a short written statement a User shares with her Friends.  Status updates may also include a link the User wants to share (for example, a link to a YouTube video or a news article).  Below in Figures 14 and 15 are examples of status updates.

**Figure 14 – Status Update**
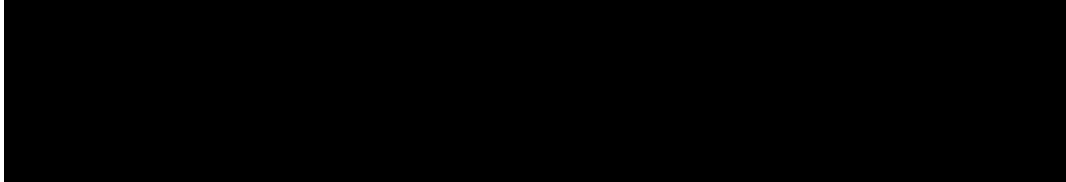


**Figure 15 – Status Update Linking to News Article**

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13.
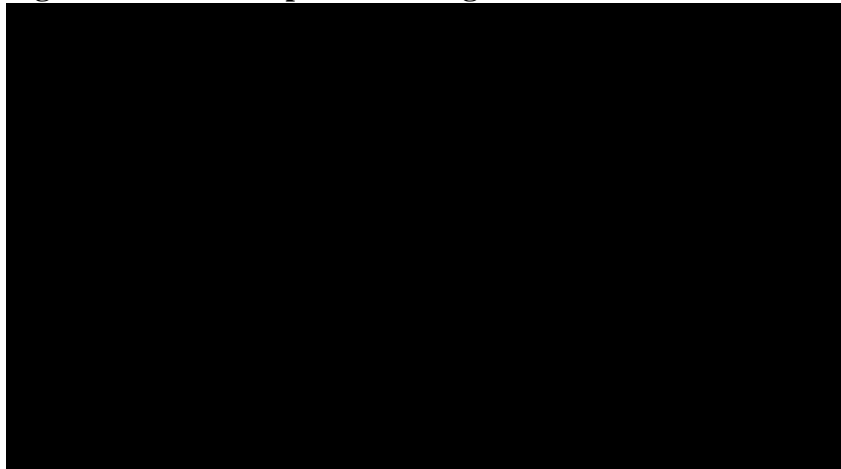
39.     Users can also post photos or videos.  An example of a photo post is depicted below in Figure 16.

**Figure 16 – Example of Photo Post**
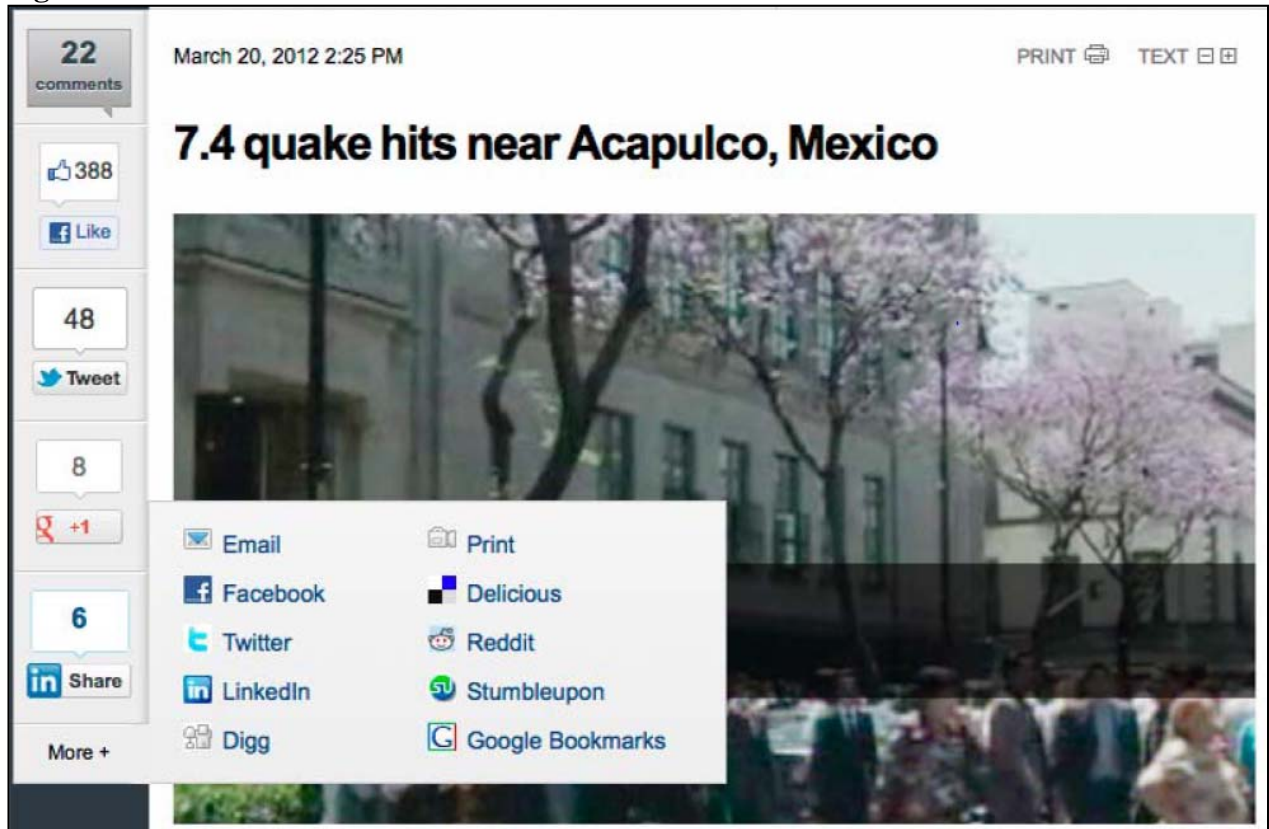


**Like Button and Like Statements**

40.     Facebook Users also share information by "Liking" content.  The Facebook "Like" button was launched in February 2009 and quickly became a highly popular way for Users to engage with content on and off of Facebook.  Users previously could "Fan" a Page by clicking on a "Become a Fan" button.  That feature was replaced by the Like button in April 2010.  Many other interactive websites have similar features that enable users to seamlessly share content (e.g., Google Plus's "+1", Twitter's "Tweet", LinkedIn's "inShare" or Reddit).  An example of a website depicting similar share features is shown below in Figure 17.

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**Figure 17 – Other Features Which Permit Users to Share Content On Interactive Website**



41.    The Like button appears next to many types of content on the Facebook website—including on the Facebook Pages of brands, politicians, causes, and other entities that have established a presence on Facebook.  Below in Figures 18 and 19 are examples of Like buttons on Facebook Pages.

**Figure 18 – Like Button on Unicef Page**



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**Figure 19 – Like Button for Mormon.org**



42.     The Like button has also been added by numerous other websites so that Facebook Users can Like news articles, videos, photos, or other content on those websites.
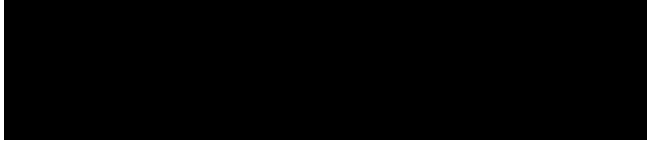
43.     By clicking on the Like button—on or off of Facebook—a User posts a Like story to his or her Timeline (e.g., "Susan Mainzer likes Unicef," "Dojanutt McSwindy likes this photo," "Angel Fraley likes this article").  Figure 20 below is an example of a Like Story.

**Figure 20 – Like Story**
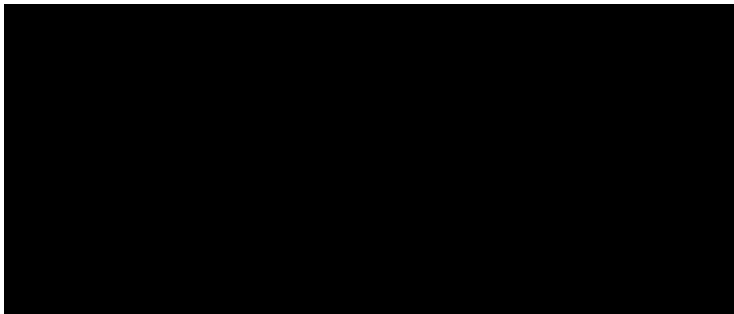


44.     As with virtually all content Users choose to share on Facebook, the Like story is displayed to the User's chosen audience—typically the User's Friends.  It may also appear in their Friends' News Feeds, as well as in Friends' Tickers.  Examples are provided in Figures 21 and 22 below.  When a User's Like statement is displayed to his or her Friends, it is typically accompanied by the User's name and/or Profile Picture.

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**Figure 21 - User Like of a Facebook Page in Friend's News Feed**



**Figure 22 - User Like in Friend's Ticker**
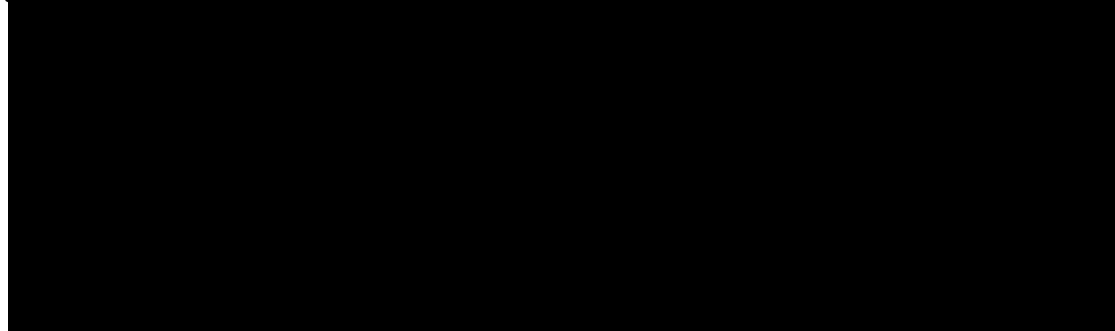


45.     Users' stories, including Like statements, can also be displayed in a number of other locations on Facebook, either with or without the User'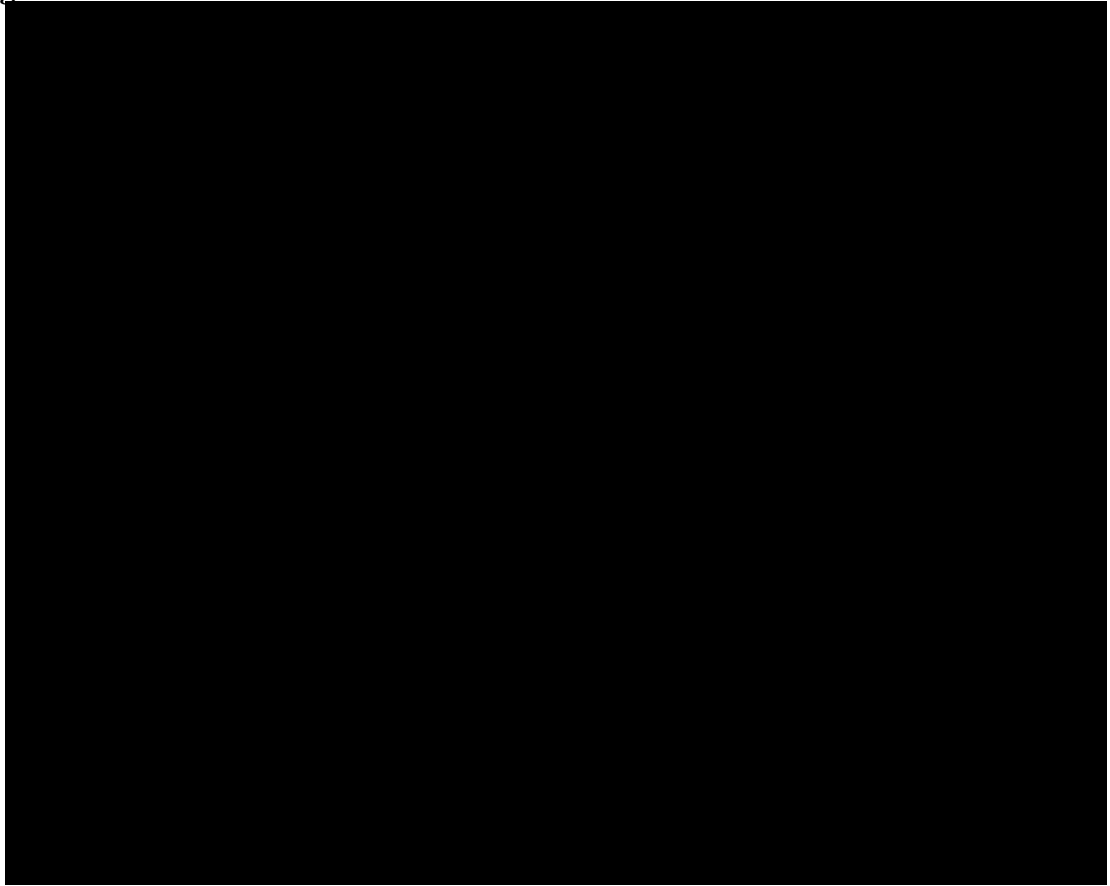s name and Profile Picture.  For instance, a Like statement for a Facebook Page may be displayed in the "Favorites" section of the User's Timeline, as shown in Figure 23 below.[1]

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[1] Before May 2010, the Pages that a User had Liked (called Page connections) were considered "Public" information, meaning anyone on Facebook could see the Pages a User had Liked. Starting in May 2010, Facebook provided privacy controls so that Users could limit who could see their Page connections, just like other content shared on Facebook.  These privacy controls for Page connections still exist, as described below.

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**Figure 23 - User Like in Favorites Section**



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16      46.      The statement may also appear on the relevant Facebook Page itself (if the

17   content Liked was a Page).  An example is shown in Figure 24 below.

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**Figure 24 - User Like on Page Itself**



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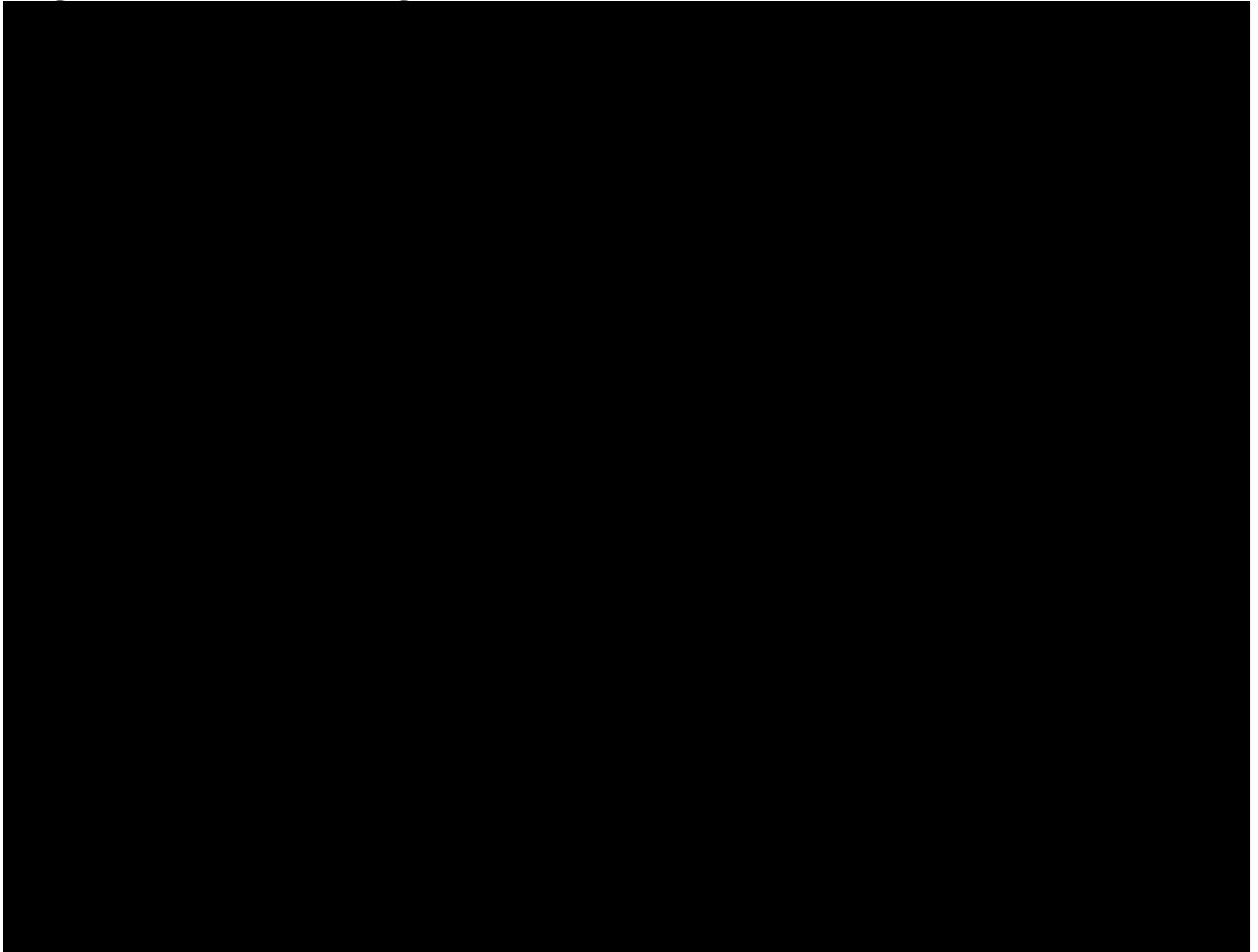
17        47.        The statement may also appear in a "Recommended Pages" unit that may be

18   displayed to a User's Friends on the right-hand side of their Home Page.   An example is

19   provided below in Figure 25.

20   **Figure 25 – Recommended Pages**



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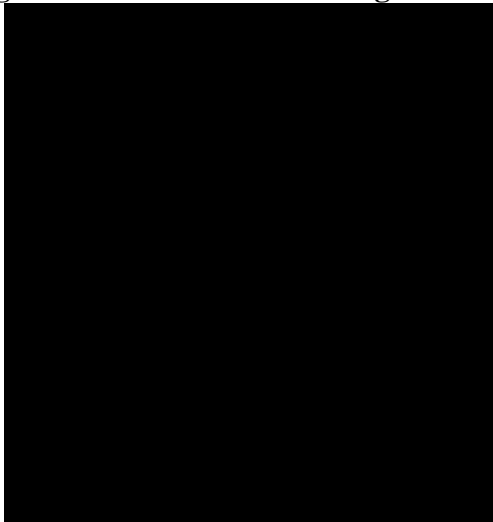
48.     Users can Like an extraordinarily broad range of content on and off Facebook. As of December 2011, there were more than 37 million Pages on Facebook alone for which ten or more Users have Liked the Page, including Pages related to various books, magazines, interests, brands, products, companies, organizations (non-profits, universities, etc.), local businesses, movies, music bands or artists, individuals (celebrities, politicians, etc.), sports teams, television programs, websites, and blogs.  Here are some examples along with the number of reported User Likes as of April 17, 2012: Coca-Cola (41 million Likes); the Beatles (26 million Likes); WalMart (14.7 million Likes); Michelle Obama (7.1 million Likes); Dalai Lama (3.2 million Likes); UNICEF (1.7 million Likes); the San Francisco 49ers (1.2 million Likes); Mormon.org (419,000 Likes); Rick Perry (180,000 Likes) and another Page called "Rick Perry For President 2012" (13,000 Likes); City and County of San Francisco (269,000 Likes); California Academy of Sciences (48,000 Likes); San Francisco International Airport (SFO) (22,000 Likes); and Boudin Bakery (19,000 Likes).

49.     As with all stories, Users control who can see their Likes through their privacy settings, or by curating the stories on their Timeline or activity log.  Users can also "unlike" a Page at any time by visiting the Page itself or can do so from their Timeline or activity log.

50.     In my experience, Users Like Pages or content for a number of reasons.  For example, some Users Like Pages to communicate their affinity for the content featured, i.e., to tell their Friends about a local restaurant, a new band, or an interesting social cause.  Other Users Like Pages—for example, about political or religious matters—to help define their identity on Facebook.  Yet other Users Like Pages to gain access to special content or offers on the Page.  These are a few of the many different reasons that I believe Users click on the Like button.
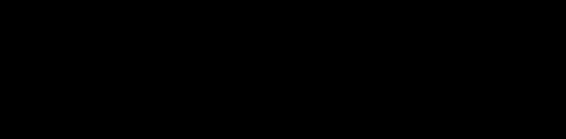
51.     Some organizations and companies actively encourage Users to Like their Pages on Facebook (including through advertising), while others do not do so.
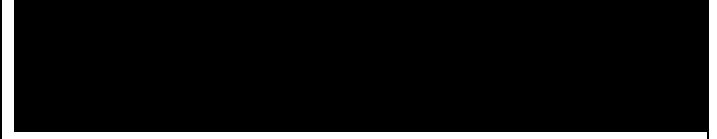
**Check-In Stories**

52.     Users can also "check in" on Facebook.  The "check-in" feature allows Users to communicate their real-time location to their Friends.

53.     When a User checks in, usually from a phone, tablet, or other mobile device, a "check-in" story may be published to the News Feeds of the User's Friends.  Examples of a check-in as it appears on a User's Timeline, as it appears in the User's News Feed, and as it appears in a Friend's News Feed are shown in Figures 26, 27, and 28.
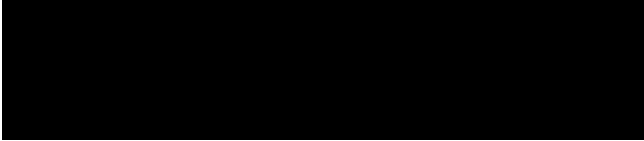
**Figure 26 - Check-in in User's Profile**     **Figure 27 - Check-in in User's News Feed**



**Figure 28 - Check-in in Friend's News Feed**



**Application Stories**

54.     There are also numerous other ways to share stories with Friends on Facebook. For example, Users can play a game (e.g., Scrabble or Farmville) or can download or use a third-party application (e.g., listen to music on Spotify, read articles on the Washington Post Social Reader, or connect with family members on Family Tree) on the Facebook Platform.

55.     As with other types of activity on Facebook, stories about these activities on the Facebook Platform can be published on various parts of the Facebook site, for instance in the News Feeds of the User's Friends, depending on the audience the User has authorized to view that content.

**Facebook Provides a Number of Different Services and Features to Users for Free**

56.     Facebook's Users generate an average of 2.7 billion Likes and Comments and upload 250 million photos each day, all of which Facebook stores.  Facebook currently stores more than 100 petabytes (100,000 terabytes or 100 quadrillion bytes) of photos and videos. Facebook also enables Users to send private and instant messages to each other; to engage in video calls; to set up events and meetings with other Users; to set up Pages for their own businesses or organizations; to set up Groups within which Users can share content with a limited group of Friends; and to access Facebook on mobile devices and tablets.  Facebook

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1    makes these services and a multitude of other features accessible to Users throughout the world,

2    for free.  Like many operators of free websites (including Google, Yahoo, sfgate.com, etc.),

3    Facebook funds the operation of its site, in part, by allowing marketers to pay to display

4    advertisements and sponsored content.  To the best of my knowledge, the current cost of

5    operating the website is nearly $2 billion per year.

6                          **Facebook Marketing Tools: Ads and Sponsored Stories**

7           57.    Facebook currently offers two types of marketing tools to potential advertisers

8    and sponsors ("marketers"): Facebook Ads and Sponsored Stories.

9           58.    The goal of these tools is to show the most relevant and engaging Ads and

10   sponsored content to Users in a way that does not disrupt them or detract from their experience

11   on Facebook.  Indeed, over the years, Facebook has tried to make advertisements and sponsored

12   content more similar to the other content on the site (for example, in the News Feed) that focuses

13   on actions taken and content shared by Users' Friends.

14          59.    Facebook is continuously iterating its marketing tools to provide the best

15   experience for its Users.

16   **Facebook Ads**

17          60.    In November 2007, Facebook launched Facebook Ads to provide a way for

18   marketers to connect with Users.

19          61.    Facebook Ads are advertisements designed by third parties that Facebook

20   displays on the Facebook website according to anonymous targeting criteria provided by the

21   marketer.  Marketers can target Ads to Users based on various criteria (e.g., age, gender,

22   geography, and interests), though marketers are not told by Facebook which specific Users were

23   targeted or which specific Users see their Ads.

24          62.    These Ads are displayed on the right-hand side and generally contain an image

25   and/or a message (sometimes termed "advertiser creative") supplied by the marketer.  Marketers

26   can choose which categories of Users they want to see their Ads with a number of different

27   targeting options: (i) location (country, state, city, zip code); (ii) age range; (iii) sex; (iv) broad

28   interest categories (for example: activities, sports, music, movies, pet owners, political

preferences, family status); (v) precise interest categories based on terms Users have shared in their Facebook profiles; (vi) relationship status; (vii) education level; and (viii) specific workplaces.

63.     Ads are much like traditional online display advertisements one would see on other websites.  Examples of Ads are shown in Figure 29.

**Figure 29 – Facebook Ads**



64.     As described above, Facebook sometimes displays "social context"—stories about actions that a User's Friends have taken with respect to the brand, organization, or company that is featured (for example, Liking the Page)—alongside an Ad.  The User's name and Profile Picture plus the action they have taken may appear next to the Ad.  (E.g., "Jane Smith likes Coke" next to an Ad for Coca-Cola.)  Facebook Ads paired with social context may be referred to by the shorthand phrase "Social Ads."

65.     I understand that Facebook has displayed trillions of Social Ad impressions[2] since their initial launch in November 2007.  An example of a Social Ad is shown in Figure 30.

**Figure 30 – Social Ad**



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[2] An impression is a unique display of an Ad or Sponsored Story on Facebook.

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23.

66.     Since March 2008, Facebook has provided a setting with which Users can select who can see their actions paired with Social Ads.  This setting currently has two options: "Pair my social actions with ads for Only my Friends" or "Pair my social actions with ads for No one." If a User chooses the "No one" option, his or her name will not be displayed next to third-party advertisements.  The Social Ads opt-out setting remains available to Users.

67.     Facebook revised the Social Ads setting page in January 2011 to make clear that it did not apply to other types of sponsored and non-sponsored content on the site: "This setting only applies to ads that we pair with news about social actions. So, independent of this setting, you may still see social actions in other contexts, like in Sponsored Stories or paired with messages from Facebook. You can learn more about how social ads, Sponsored Stories, and messages from Facebook work in the Help Center."

68.     ██████████████████████████████████████████████████████████

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As noted above, however, Users who have opted out of Social Ads following the launch of Sponsored Stories may potentially appear in Sponsored Stories.

69.     Since June 2011, Facebook has also provided a process through which parents can request that their children's social actions not be paired with Social Ads.

**Sponsored Stories**

70.     Sponsored Stories are a new marketing tool (introduced in January 2011) that allows organizations, businesses, or other sponsors to pay to increase the likelihood that a User's Friends may see certain types of stories already shared by the User on Facebook.  Sponsored Stories appear on the right-hand side, though since January 2012, they also may appear in the News Feed (center column).

71.     All content displayed in the Sponsored Story is content that was eligible to appear in the original News Feed story.  That is, for a Page Like Sponsored Story, it—just like a News Feed story—can include the name, Profile Picture, and Like statement of the User appearing in the story (e.g., Susan Mainzer), as well as the name and Profile Picture of the Page sponsoring

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the story (e.g., UNICEF).  It is the Page's Facebook Profile Picture which is displayed in Page Like Sponsored Stories, not a logo separately provided by the Page owner or Facebook.

72.    Sponsored Stories are displayed to the same Friends with whom the User shared his or her story.  For example, if a User shares his or her Likes with 10 Friends, only those 10 Friends could see a Sponsored Story featuring the User.  In some cases, Facebook may show a Sponsored Story to a narrower audience than what the User set.  For example, if a User makes his or her Likes visible to "Everyone"—meaning anyone on the Internet who visits his or her Profile—a Sponsored Story featuring that User will be shown only to the User's Friends, at most.  An example of a Sponsored Story is shown in Figure 31.

**Figure 31 – Example of Sponsored Story**
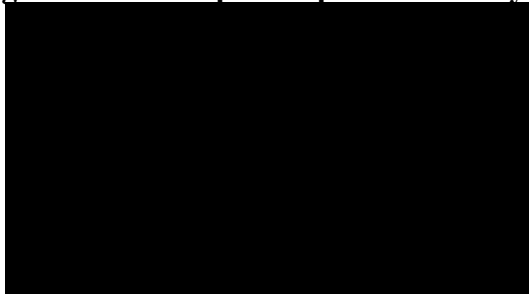


73.    There are limited types of Sponsored Stories that may feature Users' names and/or Profile Pictures:

- Page Likes: When a User Likes a Facebook Page;

- Page Post Likes: When a User Likes a Post shared by the administrator of a Facebook Page;

- App Used or Game Played: When a User uses an Application or plays a Game on Facebook;

- App Shared: When a User shares an Application on Facebook with another User;

- Poll: When a User responds to a question or poll posed by the administrator of a Facebook Page;

- Check-In: When a User checks in at a location on Facebook; and

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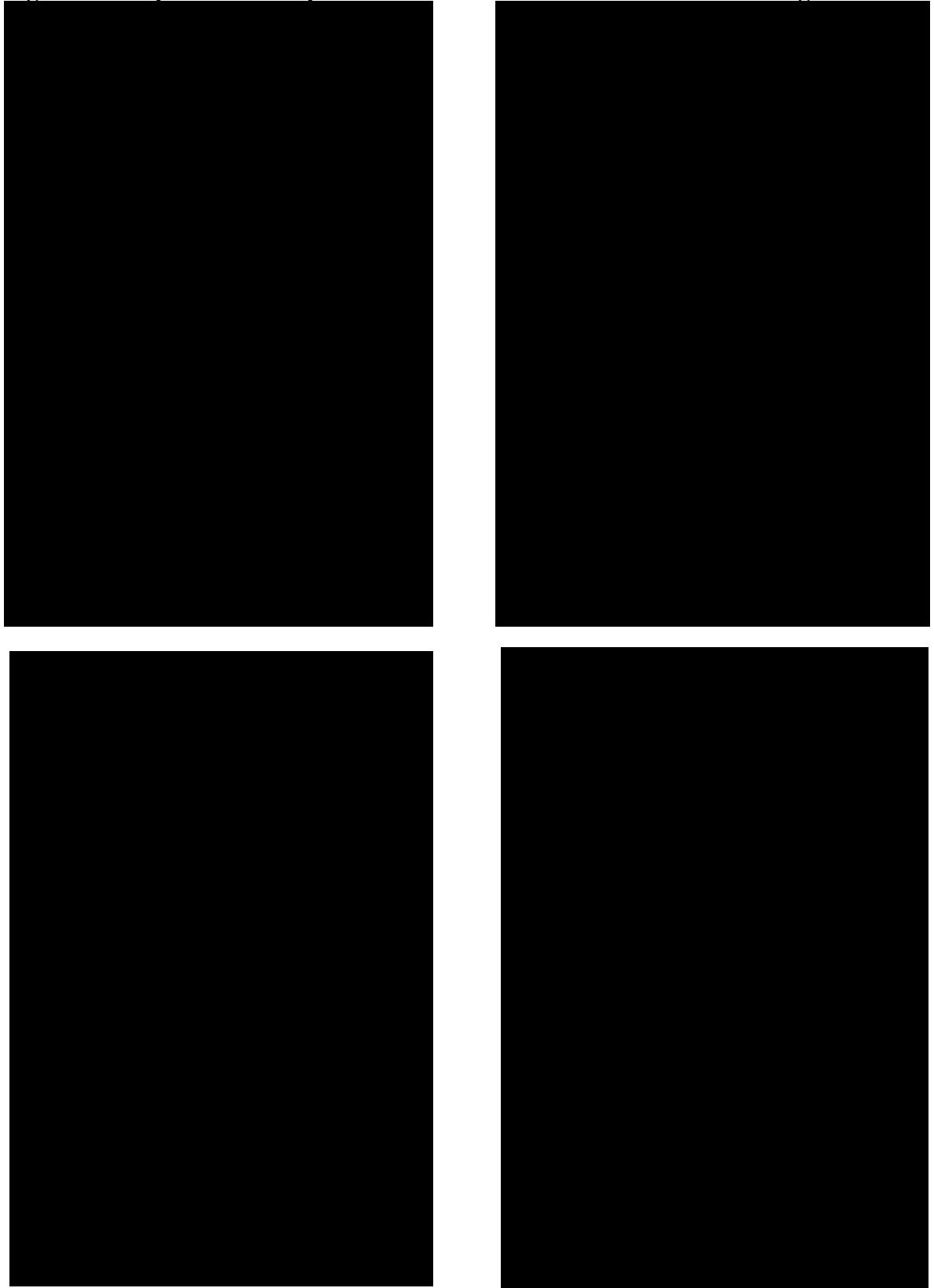CASE NO. 11-CV-01726

25.

- Domain Share: When a User Likes a piece of content on a third-party website, shares a piece of content from a third-party website, or pastes a link to a third-party website in a status update.

74.     As noted, Sponsored Stories may be generated only when a *User* takes an eligible action and chooses to share a story about his or her action with Friends.

75.     Facebook labels Sponsored Stories as such so that Users understand that a sponsor paid for the placement of stories that were shared previously by their Friends.

76.     A variety of organizations elect to sponsor stories Users share with their Friends. For example, ▮▮▮ has paid to sponsor Like Stories related to its news articles.  Politicians and political organizations such as ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ have sponsored Like stories.  Similarly, religious groups and organizations have sponsored Like Stories.  For example, ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ has sponsored Like stories of its ▮▮▮▮▮ Facebook Page, as has the ▮▮▮▮▮▮▮▮  Figure 32 shows representative Sponsored Stories for some of these Facebook Pages that appeared on Facebook. (Below each example is a screenshot of the sponsor's Page—e.g., ▮▮▮▮▮▮▮▮ Facebook Page—that Users have "Liked" and that is linked to the Sponsored Story).

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**Figure 32 –Representative Sponsored Stories and Associated Facebook Pages**

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**User Controls of Sponsored Stories**

77.     Users have a wide variety of granular options to limit or prevent their appearance in Sponsored Stories, just as they can limit or prevent the appearance of their stories in their Friends' News Feeds and elsewhere on the site.

78.     Users can control the visibility of the stories they share on Facebook through the use of an inline audience selector.  Using this inline privacy tool, Users can select the audience to which a particular post will be visible at the time they make the post.  When a User clicks on the audience selector tool, it displays a menu allowing the User to make the associated post visible to the "Public," to "Friends" only, to "Only Me," or to a "Custom" or other list of Friends, including User-created lists and smart lists.  The tool also may be used to retroactively change the audience for a particular story.

79.     The narrowest setting is "Only Me."  For any given story, setting the inline privacy setting to "Only Me" means that the story is visible on Facebook only to the User.  A story is not eligible to appear as a Sponsored Story or in the User's Friends' News Feeds if the User has set the audience to "Only Me."

80.     Users can also control who can view their Likes by visiting the Favorites tab on their Timeline.  As with other stories, Users can make different categories of their Likes (e.g., Music, Movies, Books, Interests, Other Pages) visible to the "Public," to "Friends" only, to "Only Me," or to a "Custom" or other list of Friends, including User-created lists and smart lists.

81.     Certain types of stories—for example, interactions with apps or games on Facebook—are controlled by a User's "Default Privacy" settings.  To adjust the Default Privacy settings, a User may navigate to his or her privacy settings, and choose "Control Your Default Privacy," which provides three options: "Public," "Friends," and "Custom."  By clicking on "Custom," the User can choose "Friends," "Friends of Friends," "Specific People or Lists," or "Only Me."  The narrowest setting is "Only Me," which works in the same way as the "Only Me" setting described above.

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82.     A User can click the pencil icon displayed in the upper right side of a story posted on her Timeline and choose the "Delete post" option, when prompted, in which case the story will not be republished as a Sponsored Story.

83.     A User can choose not to upload a Profile Picture or can choose to upload a Profile Picture that does not reflect his likeness, such as a landscape or a pet.  By not uploading a Profile Picture or uploading a Profile Picture that does not reflect the User's likeness or identity, the User can avoid having his likeness included in a Sponsored Story.

84.     Users can avoid taking actions on Facebook that are eligible to be republished as Sponsored Stories—for example, a User can choose not to Like Facebook Pages or related posts or comments; not check in; not share applications, links, or content; and not use apps or games.

85.     Additionally, Users can uninstall apps and games or "unlike" Pages at any time.

86.     Facebook's site and settings have evolved over time to provide Users with more granular controls over the information and content they share on Facebook.  The controls described above were launched in August 2011 and are those currently available to Users. Before August 2011, Users had controls that are similar to those described above but they were located in different parts of the site.  For example, to limit who could see one's Likes, a User accessed his or her privacy settings, went to the "Connecting on Facebook" section, and then clicked on the "View Settings" option for his or her "likes, activities and other connections."  A User could limit who could see his or her Likes to "Friends of Friends," "Friends," "Custom," or "Only Me."  Similarly, as with the current settings, a User could delete any story (making it ineligible to appear as a Sponsored Story or a News Feed story) by clicking the "X" displayed in the upper right side of a story posted on her Profile Page and choosing the "remove" or "delete post" options.

**Facebook's Education of Users Regarding Sponsored Stories**

87.     Facebook has undertaken efforts to educate Users about its marketing tools, including Sponsored Stories, and how they work.

88.     Facebook's online "Help Center" is available to anyone who visits the Facebook website, including non-Facebook Users.  For Facebook Users, the Help Center is accessible by a

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1   link on virtually every page on the website.  The Help Center is searchable by keywords and

2   organized by topics—for example: (i) under the "Basics" topic, there are sub-topics titled

3   "Privacy," "Like," "News Feed and Home," "Timeline," and "Interacting with Ads"; and (ii)

4   under the "Ads and Business Solutions" topic, there are sub-topics titled "Get Started" and

5   "Sponsored Stories."

6          89.    Several Help Center pages relate directly to Sponsored Stories.  For example, the

7   following questions currently appear under a Help Center page entitled "About Sponsored

8   Stories" (a true and correct copy of which is attached as **Exhibit A** hereto):

9   - What are Sponsored Stories?

10    Sponsored Stories are posts from your friends or Pages on Facebook that a
11    business, organization or individual has paid to highlight so there's a better
      chance you'll see them. They are regular stories that a friend or Page you're
12    connected to has shared with you.

13  - Why am I seeing Sponsored Stories?

14    When your friends interact with Pages on Facebook (ex: they like a Page or
      check in to a business), you may see stories about their activity in your News
15    Feed. Sponsored Stories are the same, except that a business or organization
      has paid to show the stories more prominently by displaying them higher in
16    News Feed or on the right-hand side of Facebook.

17  - Who can see Sponsored Stories about me?

18    Sponsored Stories respect your privacy settings. This means only the people
      you're already sharing your activity with on Facebook can see Sponsored
19    Stories about you.  For example: Jane's privacy settings allow her friends to
      see News Feed stories about Pages she likes.  Jane likes the Starbucks Page.
20    Jane's friend John can see a story about Jane liking the Starbucks Page in his
      News Feed or as a Sponsored Story.

21  - What types of stories can become Sponsored Stories?

22    A Sponsored Story can be created when someone: Likes a Page; Likes or
      comments on a Page's post; RSVPs to a Page's event; Votes on a Page's
23    question; Checks in to a place; Uses an app or plays a game; Likes or shares a
      website.

24
25  - Can I opt out of being featured in Sponsored Stories?

26    You can't opt out of being featured in Sponsored Stories, but you can visit
      your activity log to make sure that only the people you want to share with can
      see your activity. If you're aren't using timeline yet, learn how to remove posts
27    from your profile.  Sponsored Stories respect your privacy settings. This means
      only the people you're already sharing your activity with on Facebook can see
28    Sponsored Stories about you.

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1    • How are Sponsored Stories different from Facebook Ads?

2    Sponsored Stories are about your Friends' and Pages' activities on Facebook—

3    stories that are already eligible to be in your News Feed. An organization has paid to show the activity as a Sponsored Story so there's a better chance you'll see it.  With Facebook Ads, an advertiser creates a message they want to share

4    and chooses who they want to reach. Ads are sometimes paired with news about actions your friends have taken (such as liking a Page or RSVPing to an

5    event).  Learn more about Facebook Ads.

6    90.    Facebook also provides information in the Help Center about how Users can

7    change their privacy settings to limit who can see their stories:

8    • Where are my privacy settings?

9    • How does privacy work for things I share?

10    • How do I control who can see what's on my profile (timeline)?

11    This page (a true and correct copy of which is attached as **Exhibit B** hereto) is accessible at

12    http://www.facebook.com/help/privacy/basic-controls.

13    91.    Other pages within the Help Center discuss "Liking on Facebook," "Using Apps

14    on Facebook," "Ticker and Privacy," "News Feed Privacy" and "How to Post and Share."  These

15    pages are accessible at:

16    http://www.facebook.com/help/like,

17    http://www.facebook.com/help/?page=268895556524984,

18    http://www.facebook.com/help/?page=279345652077938,

19    http://www.facebook.com/help/?page=211962098838092, and

20    http://www.facebook.com/help/sharing.

21    True and correct copies of these pages are attached as **Exhibits C** through **G** hereto.

22    92.    To the best of my knowledge, much of this explanatory content appeared in the

23    Help Center at the time that Sponsored Stories launched in January 2011.  This content has been

24    revised as both Sponsored Stories and other features on the site have changed.

25    93.    Facebook's Data Use Policy ("DUP") (previously known as the "Privacy Policy")

26    provides information about marketing tools.  For example, the current DUP (adopted on

27    September 7, 2011 and a true and correct copy of which is attached as **Exhibit H** hereto) has a

28    section entitled "How advertising works" with subsections related to "Personalized ads,"

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1    "Sponsored Stories," "Ads + social context," and "Featured content."  The Sponsored Stories

2    subsection states:

> Many of the things you do on Facebook (like 'liking' a Page) are posted to your Wall and shared in News Feed.  But there's a lot to read in News Feed.  That's why we allow people to 'sponsor' your stories to make sure your friends see them.  For example, if you RSVP to an event hosted by a local restaurant, that restaurant may want to make sure your friends see it so they can come too.  If they do sponsor a story, that story will appear in the same place ads usually do under the heading 'Sponsored Stories' or something similar.  Only people that could originally see the story can see the sponsored story, and no personal information about you (or your friends) is shared with the sponsor.

94.    In December 2011, Facebook initiated a sitewide User-education campaign about its marketing tools.  Facebook displayed a message at the top of all Users' Home Pages stating: "About Ads: Ever wonder how Facebook makes money? Get the Details."  Users who clicked on the underlined text were redirected to a page entitled "About Advertising on Facebook."  Figure 33 below is a screenshot of how the sitewide message was displayed.

**Figure 33 – Sitewide Message**



95.    The "About Advertising on Facebook" page states: "From the beginning, the people who built Facebook wanted it to be free for everyone.  It now costs over a billion dollars a year to run Facebook, and delivering ads is how Facebook pays for this."  The page is accessible on Facebook's website at http://www.facebook.com/about/ads/, and a true and correct copy of that page is attached hereto as **Exhibit I**.

96.    The "About Advertising on Facebook" page also includes a number of questions, such as:

- What's the difference between ads and sponsored stories?

  Ads and sponsored stories are types of sponsored content on Facebook:

  1. Ads: A business creates an ad and pays Facebook to deliver it to the people who are most likely to find it useful.  For example, you might see an ad for a local gym if you live nearby, are a certain age and like running. Learn more about ads.

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2. Sponsored Stories: A sponsored story is different from an ad because it's a story you can already see about activity from your friends, Pages you like or apps you use.  When a business pays to sponsor one of these regular stories, Facebook displays it in a more prominent place to increase the chances that you'll notice it. Learn more about <u>sponsored stories</u>.

- Does Facebook use my name or photo in ads?

  Posts or activity that include your profile photo or name – like a story about you liking Starbucks – may be paired with an ad or highlighted in a sponsored story.  Your name and photo will only appear to people you shared the original story with.  Learn more about <u>ads and privacy</u>.

97.    Shortly after the launch of Sponsored Stories, Facebook posted a brief video explaining what Sponsored Stories are and how they work.  That video is accessible to both Users and non-Users on the Facebook website at http://www.facebook.com/video/video.php?v=10100328087082670.

**Research Report Regarding Sponsored Stories**

98.    Attached as **Exhibit J** hereto is a ███████████████████████████████ ██████████████████████████████████████████████████████████ ██████████████████████████████████████████████████████████ ██████ .

*      *      *      *      *

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 2012 at Menlo Park, California.

_/s/ James C. Squires_____
James C. Squires

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**GENERAL ORDER 45 ATTESTATION**

In accordance with General Order 45, concurrence in the filing of this document has been obtained from the signatory and I shall maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party.

Dated:  April 19, 2012                    COOLEY LLP

                                          /s/ Michael G. Rhodes
                                          Michael G. Rhodes
                                          Attorneys for Plaintiff

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